

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILLS NOS. 754 & 794

94TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, February 14, 2008, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

3690S.04C

AN ACT

To repeal sections 650.055 and 650.056, RSMo, and to enact in lieu thereof two new sections relating to the DNA profiling system, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 650.055 and 650.056, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 650.055 and 650.056, to
3 read as follows:

650.055. 1. Every individual[,] **who pleads guilty or nolo contendere**
2 **to or is convicted of or found guilty** in a Missouri circuit court[, who pleads
3 guilty to or is found guilty] of a felony or any offense under chapter 566, RSMo,
4 **or a juvenile who is adjudicated in a Missouri juvenile court of an**
5 **offense which would constitute a felony under chapter 565, RSMo, or**
6 **any offense under chapter 566, RSMo, if committed by an adult, or an**
7 **individual who** has been determined [beyond a reasonable doubt] to be a
8 sexually violent predator pursuant to sections 632.480 to 632.513, RSMo, shall
9 have a blood, **buccal swab**, or **other** scientifically accepted biological sample
10 collected for purposes of DNA profiling analysis:

11 (1) Upon entering or before release from the department of corrections
12 reception and diagnostic centers[:] or **upon entering or before release from**
13 **any juvenile detention facility or before release from the jurisdiction**
14 **of the juvenile court; or**

15 (2) Upon entering or before release from a county jail or detention facility,
16 state correctional facility, or any other detention facility or institution, whether
17 operated by private, local, or state agency, or any mental health facility if

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 committed as a sexually violent predator pursuant to sections 632.480 to 632.513,
19 RSMo; or

20 (3) When the state accepts a person from another state under any
21 interstate compact, or under any other reciprocal agreement with any county,
22 state, or federal agency, or any other provision of law, whether or not the person
23 is confined or released, the acceptance is conditional on the person providing a
24 DNA sample if the person was convicted of, pleaded guilty to, [or] pleaded nolo
25 contendere to **or adjudicated of** an offense in any other jurisdiction which
26 would be considered a qualifying offense as defined in this section if committed
27 in this state, or if the person was convicted of, pleaded guilty to, or pleaded nolo
28 contendere to any equivalent offense in any other jurisdiction; or

29 (4) If such individual is under the jurisdiction of the department of
30 corrections. Such jurisdiction includes persons currently incarcerated, persons
31 on probation, as defined in section 217.650, RSMo, and on parole, as also defined
32 in section 217.650, RSMo.

33 2. The Missouri state highway patrol and department of corrections shall
34 be responsible for ensuring adherence to the law.

35 3. Any person required to provide a DNA sample pursuant to this section
36 shall be required to provide such sample, without the right of refusal, at a
37 collection site designated by the Missouri state highway patrol and the
38 department of corrections, **or the law enforcement agency of the county or**
39 **city not within a county in which the conviction, adjudication, finding**
40 **of guilty, plea of guilty, or plea of nolo contendere occurred.**

41 4. Authorized personnel collecting or assisting in the collection of samples
42 shall not be liable in any civil or criminal action when the act is performed in a
43 reasonable manner. Such force may be used as necessary to the effectual carrying
44 out and application of such processes and operations.

45 5. **For individuals included in subsection 1 of this section, the**
46 **knowing refusal or knowing failure to provide a DNA sample is a class**
47 **A misdemeanor.**

48 6. The enforcement of these provisions by the authorities in charge of
49 state correctional institutions, **state juvenile detention facilities**, and others
50 having custody [or], jurisdiction, **or supervision** over those who have been
51 convicted of, **found guilty of**, pleaded guilty to, or pleaded nolo contendere to
52 felony offenses **or offenses under chapter 566, RSMo, or authorities**
53 **having custody, jurisdiction, or supervision over juvenile offenders who**

54 **are adjudicated in a Missouri juvenile court of an offense that would**
55 **constitute a felony under chapter 565, RSMo, or any offense under**
56 **chapter 566, RSMo, if committed by an adult** which shall not be set aside
57 or reversed is hereby made mandatory. The board of probation or parole shall
58 recommend that an individual who refuses to provide a DNA sample have his or
59 her probation or parole revoked. In the event that a person's DNA sample is not
60 adequate for any reason, the person shall provide another sample for analysis.

61 [3.] **7.** The procedure and rules for the collection, analysis, storage,
62 expungement, use of DNA database records and privacy concerns shall not
63 conflict with procedures and rules applicable to the Missouri DNA profiling
64 system and the Federal Bureau of Investigation's DNA databank system.

65 [4.] **8. Knowingly unauthorized [uses or] use of, knowing attempt**
66 **to use, knowing** dissemination of **or attempt to disseminate** individually
67 identifiable DNA information in a **DNA** database for purposes other than
68 criminal justice or law enforcement is a class A misdemeanor. **Knowingly**
69 **unauthorized tampering with, knowing attempt to tamper with, or**
70 **other knowingly unauthorized use of, knowing attempt to use, or**
71 **knowing dissemination of or attempt to disseminate any sample**
72 **collected for the DNA profiling system is a class A misdemeanor.**

73 [5.] **9.** Implementation of sections 650.050 to 650.100 shall be subject to
74 future appropriations to keep Missouri's DNA system compatible with the Federal
75 Bureau of Investigation's DNA databank system.

76 [6.] **10.** All DNA records and biological materials retained in the DNA
77 profiling system are considered closed records pursuant to chapter 610, RSMo. All
78 records containing any information held or maintained by any person or by any
79 agency, department, or political subdivision of the state concerning an
80 individual's DNA profile shall be strictly confidential and shall not be disclosed,
81 except to:

82 (1) Peace officers, as defined in section 590.010, RSMo, and other
83 employees of law enforcement agencies who need to obtain such records to
84 perform their public duties;

85 (2) The attorney general or any assistant attorneys general acting on his
86 or her behalf, as defined in chapter 27, RSMo;

87 (3) Prosecuting attorneys or circuit attorneys as defined in chapter 56,
88 RSMo, and their employees who need to obtain such records to perform their
89 public duties; or

90 (4) Associate circuit judges, circuit judges, judges of the courts of appeals,
91 supreme court judges, and their employees who need to obtain such records to
92 perform their public duties.

93 [7.] 11. Any person who obtains records pursuant to the provisions of this
94 section shall use such records only for investigative and prosecutorial purposes,
95 including but not limited to use at any criminal trial, hearing, or proceeding; or
96 for law enforcement identification purposes, including identification of human
97 remains. Such records shall be considered strictly confidential and shall only be
98 released as authorized by this section.

99 [8.] 12. An individual may request expungement of his or her DNA
100 sample and DNA profile through the court issuing the reversal or dismissal. A
101 certified copy of the court order establishing that such conviction has been
102 reversed or guilty plea or plea of nolo contendere has been set aside shall be sent
103 to the Missouri state highway patrol crime laboratory. Upon receipt of the court
104 order, the laboratory will determine that the requesting individual has no other
105 qualifying offense as a result of any separate plea or conviction prior to
106 expungement.

107 (1) A person whose DNA record or DNA profile has been included in the
108 state DNA database in accordance with this section, section 488.5050, RSMo, and
109 sections 650.050, 650.052, and 650.100 may request expungement on the grounds
110 that the conviction has been reversed, or the guilty plea or plea of nolo contendere
111 on which the authority for including that person's DNA record or DNA profile was
112 based has been set aside.

113 (2) Upon receipt of a written request for expungement, a certified copy of
114 the final court order reversing the conviction or setting aside the plea and any
115 other information necessary to ascertain the validity of the request, the Missouri
116 state highway patrol crime laboratory shall expunge all DNA records and
117 identifiable information in the database pertaining to the person and destroy the
118 DNA sample of the person, unless the Missouri state highway patrol determines
119 that the person is otherwise obligated to submit a DNA sample. Within thirty
120 days after the receipt of the court order, the Missouri state highway patrol shall
121 notify the individual that it has expunged his or her DNA sample and DNA
122 profile, or the basis for its determination that the person is otherwise obligated
123 to submit a DNA sample.

124 (3) The Missouri state highway patrol is not required to destroy any item
125 of physical evidence obtained from a DNA sample if evidence relating to another

126 person would thereby be destroyed.

127 (4) Any identification, warrant, arrest, or evidentiary use of a DNA match
128 derived from the database shall not be excluded or suppressed from evidence, nor
129 shall any conviction be invalidated or reversed or plea set aside due to the failure
130 to expunge or a delay in expunging DNA records.

650.056. Any evidence leading to a **plea of guilty, plea of nolo**
2 **contendere, finding of guilt or** conviction of [a felony] **an offense or**
3 **juvenile adjudication** described in subsection 1 of section 650.055 which has
4 been or can be tested for DNA shall be preserved by the investigating law
5 enforcement agency.

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Bill

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